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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,162	09/29/2000	Lee B. Hansen	RA 5311	9340

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EXAMINER

LIPMAN, JACOB

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/676,162

Applicant(s)

HANSEN ET AL.

Examiner

Jacob Lipman

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 41-52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-40, drawn to computer security, for securely increasing a computer's performance, classified in class 713, subclass 183.
 - II. Claims 41-52, drawn to business methods for increasing revenue of data processing sales, classified in class 705, subclass 1.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as allowing only authorized users to upgrade a system. See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. On May 7th 2004, Brian Tufte was contacted and elected claims 1-40 without traverse

Information Disclosure Statement

5. The information disclosure statement (IDS) submitted on 1/11/2001 has been considered by the examiner.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 3, 13-15, 32, 39, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 3 recites the limitation "A method according to claim 3" in line 1. It is unclear what claim this is intended to depend from. In this office action it has been treated as reading "A method according to claim 2".

9. Claim 13 recites the limitation "the time of increased performance level" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 14 recites the limitation "if the increase in performance level of the at least one processor has exceeded the maximum time of use" in lines 2-3. It is unclear how an increase level can be compared to, and exceed a time.

11. Claim 32 recites the limitations "the original time" and "the time of use of the additional processors" in lines 3-4. There is insufficient antecedent basis for these limitations in the claim.

12. Claim 39 recites the limitation "the original limit" in line 3. There is insufficient antecedent basis for this limitation in the claim. It also appears as if the word "on" in this line may be a typo, and should possibly read "of".

13. Claim 40 recites the limitation "downs the processors that are indicated as unavailable" in line 2. Downing the number of unavailable processors is equal to upping the number of available processors, as in claim 38. It seems to the examiner that this

claim should read "downs the processors that are indicated as available" or "ups the processors that are indicated as unavailable".

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-9, 16-26, and 33-40, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell et al., US Patent number 5,365,587.

With regard to claims 1, 6, 17 and 18 Campbell discloses a method for increasing performance of a data processing system (column 2 lines 37-41) including providing a first key allowing an initial performance level (column 2 lines 41-52), and providing a second key that increases the level (column 2 lines 52-56) when needed (column 2 lines 31-36).

With regard to claims 2-5, Campbell discloses the second key has an expiration date (one time enabled, column 2 lines 56-62).

With regard to claim 7, Campbell discloses the key is verified (column 2 lines 52-56).

With regard to claims 8 and 9, Campbell discloses the key specifies a system serial number (column 8 lines 58-60).

With regard to claim 16, Campbell discloses that the system can be in use when updated (updated via keyboard, column 10 lines 4-8)

With regard to claims 19-22, Campbell discloses the performance level of each processor is maintained in a database (column 8 line 56-column 9 line 2).

With regard to claim 23, Campbell discloses the key is encrypted (column 11 lines 13-21).

With regard to claims 24-26, and 33-40, Campbell discloses the performance increase could be controlled by increasing the number of active processors (column 6 lines 39-53).

16. Claims 1-23, as best understood, are rejected under 35 U.S.C. 102(a) as being anticipated by Fenstermaker et al., US Patent number 5,365,587.

With regard to claims 1, 6, 17 and 18, Fenstermaker discloses a method for increasing performance of a data processing system (column 1 lines 45-50) including providing a first key allowing an initial performance level (column 1 lines 37-41), and providing a second key that increases the level (column 1 lines 41-43) when needed.

With regard to claims 2-5, Fenstermaker discloses the second key has an expiration date (column 4 lines 17-26).

With regard to claims 7 and 10-15, Fenstermaker discloses the key is verified (column 3 lines 17-23).

With regard to claims 8 and 9, Fenstermaker discloses the key is verified against a system serial number (column 4 lines 45-48).

With regard to claim 16, Fenstemaker discloses that the system can be in use when updated (column 1 lines 47-50).

With regard to claims 19-22, Fenstemaker discloses the performance level of each processor is maintained in a database (column 4 line 61-67).

With regard to claim 23, Fenstemaker discloses the key is encrypted (column 5 lines 1-5).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Fenstemaker.

With regard to claims 24-26 and 33-40, Fenstemaker discloses a method to increase the performance of a processing system as outlined above, but does not mention controlling the number of active processors. Campbell discloses a method to increase the performance of a processing system by controlling the number of active processors as outlined above. It would have been obvious for one of ordinary skill in the art to increase the number of processors in Fenstemaker's system to allow for further profitability and control.

19. Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenstermaker in view of Campbell.

With regard to claims 27-32 Campbell discloses a method to increase the performance of a processing system as outlined above, but does not mention explicitly verifying an expiration date to see if it had passed. Campbell does disclose that the key can be good for a one-time use, as outlined above. Fenstermaker discloses a method to increase the performance of a processing system, including verifying an expiration date to see if it had passed as outlined above. It would have been obvious for one of ordinary skill in the art to verify an expiration date in the key in Campbell's system, in order to control the one-time use.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Lipman whose telephone number is 703-305-0716. The examiner can normally be reached on 7:00 - 4:00 (M-Th).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on 703-308-4789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JL


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